

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0584 RST  
Aircraft Use Tax  
For The Period Ending: 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales/Use Tax – Aircraft**

**Authority:** IC 6-2.5-3-2; IC 6-6-6.5-1; IC 6-6-6.5-2

The taxpayer states he was assessed use tax upon an incorrect purchase price.

**II. Penalty – 100% Fraud**

**Authority:** IC 6-8.1-10-4

The taxpayer protests the one hundred percent (100%) fraud penalty.

**STATEMENT OF FACTS**

The taxpayer purchased aircraft N 5483G on April 3, 1997 and failed to register it with the State of Indiana. On August 22, 1997 the Aeronautics Section of the Compliance Division notified the taxpayer and allowed the taxpayer ten days to file the application for registration and a sworn affidavit. On October 7, 1997 a sworn affidavit was signed by the seller which included a trade-in aircraft. The trade-in aircraft, however, cannot be included in the net selling price as it was no longer owned by the taxpayer.

**I. Sales & Use Tax – Aircraft**

**DISCUSSION**

The taxpayer has conceded the sales tax issue and agrees that the traded aircraft not be allowed. However, the cost of the aircraft is in error as it was based upon the seller's affidavit. The sales contract calls for a total selling price of \$325,000. The taxpayer states he will supply paperwork within one day to prove that the actual selling price was \$310,000 as shown on the revised application for Aircraft Registration dated October 6, 1997. If the information is not available to him or the Department the taxpayer agrees to the tax assessed on the \$325,000 value.

**FINDING**

The taxpayer has conceded the use tax and the department will adjust the assessment to the correct sales price.

**II. Administration – Fraud Penalty**

The taxpayer protests the imposition of the one hundred percent (100%) fraud penalty.

**DISCUSSION**

The taxpayer argues that he was not fraudulent because the affidavit signed by the seller gave him the net value subject to tax and the laws are vague. Taxpayer claims he believed he could offset the cost of the prior aircraft with the cost of the new aircraft regardless of the date the first aircraft was sold.

IC 6-8.1-10-4(a) allows the department to impose a one hundred percent (100%) penalty if the person files a return with the fraudulent intent of evading the tax. The department has not established that the taxpayer filed a return with the fraudulent intent of evading the tax. The taxpayer relied on the seller's affidavit which was in error.

The department will reduce the penalty to ten percent (10%) for negligence.

**FINDING**

The taxpayer's protest is partially sustained. The department will reduce the one hundred percent (100%) fraud penalty to a ten percent (10%) negligence penalty.